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EXAMINER

RANGREJ, SHEETAL

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Prosecution History Summary

- Claims 1 and 27 are cancelled.
- Claims 25-26 and 28-30 are amended.
- Claims 2-26 and 28-30 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/26/2008 has been entered.

Drawings

2. The drawings were received on 12/26/2008. These drawings are accepted.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 24-26 and 28-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant directs the Examiner's attention to paragraphs 64 and 66 of the Specification to support the amendments. Examiner is unable to locate paragraphs 64 and 66 in the originally filed disclosure; furthermore Examiner is unable to locate the sections that support the amendments.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 24-25 and 28-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. The basis of this rejection is based on recent Federal Circuit decisions and Supreme Court precedent in particular, *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876) which state that the process must:

(1) be tied to another statutory class (such as a particular apparatus); or

(2) transform underlying subject matter (such as an article or materials) to a different state or thing.

For a claimed invention to be statutory subject matter eligible, the claimed invention must fall within a judicial exception. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited claims should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps or positively recite subject matter that is being transformed for example by identifying the material that is being changed to a different state.

7. In the present case, claims 24-25 and 28-29 recite an abstract idea only. The claims recite steps and means for a) defining processes, b) forming links between processes, traversing processes by meeting exit requirements. These steps and means do not apply, involve, use, or advance the technological arts since they can be performed in the mind of the user or by use of a pencil and paper. These steps and means only constitute an idea of how to define, linking and traversing processes.

8. While applicants' claims encompasses "a code segment," the claim is not limited to such an embodiment. applicants' claimed method steps, as recited in the body of claims 25 and 29, are not limited to process steps using particular structure or apparatus. To the contrary, looking only to the method steps recited in the body of claim 1, they would reasonably be interpreted to encompass a human being performing these steps. Nominal recitations of structure in an

otherwise ineligible method fail to make the method a statutory process. *See Benson*, 409 U.S. at 71-72. *In re Langemyr*.

9. The Examiner directs Applicant's attention to claims 26 and 30 as a possible way to amend the claims to put them within a judicial exception. In particular, explicitly claiming the medium or structure in the body of the claim that performs the underlying process steps would serve to better recite the technological arts within the present set of claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24, 2-10, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Care Entrée (<http://web.archive.org/web/200102025005600/careentree.com>, 2001) in view of Lipton, et al. ("Pharmacy benefit management companies: Dimensions of performance", Annual Review of Public Health. Palo Alto: 1999. Vol. 20, p. 361), further in view of Goch ("A New Card Deal." Best's Review. Oldwick: July 2002. Vol. 103 (3); p. 73).

3. As per claim 24, the Care Entrée program teaches a method for receiving a membership fee from one or more individuals to become members of the health care plan (p. 3, para. 10) and participate via incentives within a member multi-level marketing network, wherein one of the

incentives includes paying a portion of each received membership fee into a multi-level marketing matrix (p. 2, para. 8-9; p. 11, para. 61-64). The Care Entrée program also teaches obtaining information from one or more medical service/good providers that have joined the health care plan (p. 8, para. 41) and providing a discount price list and the medical service/good provider listing to the member (p. 8, para. 41).

The Care Entrée program does not teach a method that regulates the cost of services/goods provided to the members by the medical service/good providers such that the members pay the medical service/good providers in-full directly for any services/goods rendered to the members based on the discount price list, and wherein the medical service/good provider listing comprises basic listing and premium listings for the medical service/good providers.

Lipton et al. teaches a system comprising a method that regulates the cost of services/goods provided to the members by the medical service/good providers (para. 30) and wherein the medical service/good provider listing comprises basic listing and premium listings for the medical service/good providers (para. 7, 41-45, and 111).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of the Care Entrée program with Lipton et al. with the motivation of managing medical costs and services (para. 32-34). This is accomplished by a pharmacy manager via drug enrollments reports/physician prescription history and rebates from the drug manufacturer. This can be equated to a network provider in that the network provider takes the information and generates data pertaining to which medical services are most

frequently prescribed or ordered, and uses this information to negotiate a discount on that particular service and/or medication.

Lipton fails to explicitly teach a method such that the members pay the medical service/good providers in-full directly for any services/goods rendered to the members based on the discount price list.

Goch teaches a method such that the members pay the medical service/good providers in-full directly for any services/goods rendered to the members based on the discount price list (para. 20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Care Entrée program with Lipton et al. and Goch with the motivation of ensuring a discounted cost for medical services (Goch: para. 18).

4. As per claim 2, the Care Entrée program fails to teach a method wherein the discount price list is a variable discount price list that tracks a known standard service/good price list.

Lipton et al. teaches a system in which the discount price list is a variable discount price list that tracks a known standard service price list (paragraph 7). This is accomplished through the use of negotiated discounts with pharmacy networks, as well as controlling the formularies used by the pharmacy benefit manager (i.e. the pharmacy benefit manager chooses which drugs to include in the formulary, thereby lowering the cost of the pharmaceuticals). This same method can be applied to a list of services provided by a medical provider, wherein negotiated discounts are applied to medical providers, hospitals, hearing, vision, etc. It can be assumed that lists are

required to provide network provider with the recent price list, as well as the discounted price list.

The motivation to combine the teachings is discussed in claim 24.

5. As per claim 3, the Care Entrée program teaches a method wherein the membership fee is paid by the individual (p. 3, para. 10). The Care Entrée program discloses a method in which anyone can pay a certain fee to join a health care plan.

6. As per claim 4, the Care Entrée program teaches a method in which the membership fee is paid by the individual's employer (page 12, paragraph 67).

7. As per claim 5, the Care Entrée program teaches a method in which the membership fee is paid by the individual's business (page 12, paragraph 67). The examiner interprets an individual's employer, in this case, to be equivalent to an individual's business. In either case, the individual is provided the opportunity to offer employees (including self) a supplemental health care plan.

8. As per claim 6, the Care Entrée program teaches a method wherein the member ship fee is a renewal fee (page 2, paragraph 6). The examiner interprets the monthly fee to be a renewal fee - the member is paying a renewal fee every month.

9. As per claim 7, the Care Entrée program teaches a method wherein the member can include his/her family in the health care plan (page 3, paragraph 10). The Care Entrée program allows the entire family (including all Internal Revenue Service dependents) to join the health care plan.

10. As per claim 8, the Care Entrée program teaches a method wherein the medical service/good providers are selected from the group consisting of physicians, hospitals, physical therapists, nursing facilities, cancer treatment centers, optical and hearing aid dispensaries, hospices, clinics, pharmacies, chiropractors, dentists, medical supply stores, hospital supply stores, and handicap equipment suppliers (page 11, paragraphs 61 - 63). Although physical therapy, cancer treatment centers, and medical, hospital, and handicap supply stores are not specifically taught in the Care Entrée program, these services/providers can be included as ancillary services, as taught by the Care Entrée program (page 5, paragraphs 21 -23).

11. As per claim 9, the Care Entrée program teaches a method wherein the medical service/good provider is a doctor that works for a corporation (page 4, paragraph 16). The Care Entrée program refers to this as a PHCS (Private Health Care System).

12. As per claim 10, the Care Entrée program teaches a method comprising providing a medical service/good provider listing by the network provider to the members (page 12, paragraphs 68 and 69). The Care Entrée program provides a listing of common health care providers in certain area.

13. As per claim 28, the Care Entrée program teaches a method for receiving a membership fee from one or more individuals to become members of the health care plan (p. 3, para. 10). The Care Entrée program also teaches obtaining information from one or more medical service/good providers that have joined the health care plan (p. 8, para. 41) and participate via incentives within a member multi-level marketing network, wherein one of the incentives

includes paying a portion of each received membership fee into a multi-level marketing matrix

(p. 2, para. 8-9; p. 11, para. 61-64).

The Care Entrée program does not teach a method to provide a discount price list regulating the cost of services/goods provided.

Lipton et al. teaches a system comprising a method to provide a discount price list regulating the cost of services/goods provided to the members (para. 30). The examiner interprets the pharmacy benefit manager to be a similar function as the network provider in that it provides a discount on all health care needs.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of the Care Entrée program with Lipton et al. with the motivation of managing medical costs and services (para. 32-34). This is accomplished by a pharmacy manager via drug enrollments reports/physician prescription history and rebates from the drug manufacturer. This can be equated to a network provider in that the network provider takes the information and generates data pertaining to which medical services are most frequently prescribed or ordered, and uses this information to negotiate a discount on that particular service and/or medication.

14. Claims 11-23, 25-26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Care Entrée in view of Lipton, et al. and Goch as applied to claim 24 above, and further in view of U.S. Patent No. 5, 819, 092 (Ferguson, et al.).

15. As per claim 11, the method of claim 10 as applied to claim 24, is taught by the Care Entrée program, in view of Lipton et al.

The Care Entrée program and Lipton et al. do not teach a method comprising basic and premium listings.

Ferguson et al. teaches a method wherein the medical service/good provider listing comprises basic listings and premium listings (column 7, lines 10 - 18 and column 13, lines 66 - 67 through column 14, lines 1 - 6). The examiner interprets basic and premium listings to be equivalent to a directory lookup service, as disclosed in Ferguson et al. The directory look up service can encompass a listing of people (i.e. physicians) and products (i.e. pharmaceuticals).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of basic and premium listings as taught by Ferguson et al, with the motivation of providing a fast method of online searching directories (column 4, lines 18 - 20 and 41 - 43).

16. As per claim 12, the method of claim 11 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the basic listings are free of charge to medical services/good providers.

Ferguson et al. teaches a method wherein the basic listings are provided to medical service/good providers free of charge (column 13, lines 66 - 67 through column 14, lines 1 - 12). The examiner interprets the look up directory disclosed by Ferguson et al. to include a 'basic' listing - where a name, address and other related information is available.

The motivation for combining the teachings of the Care Entrée Program, Lipton et al., and Ferguson et al. is discussed in claim 11.

17. As per claim 13, the method of claim 11 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the premium listings are available to medical service/good providers for a fee.

Ferguson et al. teaches a method wherein the premium listings are provided to medical service/good providers upon payment of a premium listing fee (column 14, lines 6 - 12 and column 18, lines 33- 35). The examiner interprets the look up directory disclosed by Ferguson et al. to include a 'premium' listing - where a name, address and a hyperlinked document with other related information is available.

The motivation for combining the teachings of the Care Entrée Program, Lipton et al., and Ferguson et al. is discussed in claim 11.

18. As per claims 14, 15, and 16 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the premium listings are hyperlinked to a medical service/good providers web page.

Ferguson et al. teaches a method wherein the premium listings include a link to a customizable web page for the medical services/goods provider accessible via a global telecommunications network, wherein the premium listings include a link to the medical service/good provider's web site, and wherein the premium listings are customized for each medical Service/good provider (column 14, lines 6 - 19 and column 7, lines 37 - 42). The

hyperlinks allow the user to access a site in which qualified users may submit new entries, thereby making it customizable.

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of premium listings hyperlinked to a medical service/good providers web page (where the medical service/good provider can be equated to a pharmaceutical company) and is accessible to the global internet as taught by Ferguson et al. with the motivation of allowing a user to create online services using existing information (column 7, lines 1 -4).

19. As per claim 17, the method of claim 10 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the discount price list is available via a telecommunications network.

Ferguson et al. teaches a method wherein the discount price list and the medical service/good providers listing are accessible via a global telecommunications network (column 14, lines 2 - 6 and column 7, lines 37 - 42). The examiner interprets the discount price list to be a function of the directory look up disclosed by Ferguson et al. It provides information to users of a health care plan.

The motivation for combining the teachings of the Care Entrée Program, Lipton et al., and Ferguson et al. is discussed in claims 14, 15, and 16.

20. As per claim 18, the method of claim 10 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the discount price list is searchable by members of the health care plan.

Ferguson et al. teaches a method wherein the discount price list and the medical service/goods providers listing are searchable by the members using one or more search criteria (column 10, lines 62-65). Ferguson et al. discloses a method where users are allowed to perform searches, where they can specify the search criteria.

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of searching a discount price list and medical service/goods providers listings as taught by Ferguson et al. with the motivation of enabling users to search listings or entries in a directory by a variety of techniques (column 14, lines 10-12), including names, categories, and full text searches.

21. As per claims 19 and 20, the Care Entrée program teaches a method wherein one of the search criteria is based on geographic area and one of the search criteria is based on the services provided by the medical service/good provider (page 12, paragraphs 68 and 69). The Care Entrée program provides a listing of common health care providers in certain area.

22. As per claim 21, the Care Entrée program in view of Lipton et al. teaches the method of claim 1.

The Care Entrée program and Lipton et al. fail to explicitly teach a method wherein the network provider provides the advertisements to members.

Ferguson et al. teaches a method comprising one or more advertisements by the network provider to the members (column 14, lines 6 - 12 and column 14, lines 21 - 31).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of placing online advertisements as taught by Ferguson et al. with the motivation of increasing the sales of a medical services/goods provider by use of advertisements in the discount price list by the network provider (column 9, lines 54 - 56). An online service can be used as a tool to enable electronic commerce. In this case, the online service would advertise services of medical professionals, hospitals and more.

23. As per claim 22, the method of claim 21 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the advertiser pays the network provider a fee for advertising.

Ferguson et al. teaches a method wherein an advertiser pays the network provider an advertising fee to provide the advertisements to the members (column 18, lines 33 - 35).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of charging a fee to place advertisements as taught by Ferguson et al. with the motivation of creating an easy to use online service (column 10, lines 25 - 29) which can be used to generate revenue for a network provider by allowing a medical service/good provider to advertise on medical services/goods provider lists.

24. As per claim 23, the method of claim 21 as applied to claim 24, is taught by the Care Entrée program in view of Lipton et al.

The Care Entrée program and Lipton et al. fail to teach a method wherein the advertisement is used to search the medical service/good provider listing.

Ferguson et al. teaches a method wherein the advertisement provided to a member is based on one or more search criteria used to search the medical service/good provider listing (column 14, lines 6 - 12). Searches can be made in directory look up's using names, categories or full text search techniques.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of including advertisements when conducting a search of a medical service/good provider listing as taught by Ferguson et al. with the motivation of introducing a revenue generating tool by charging a fee for the online service (column 14, lines 30- 31).

25. As per claim 25, the Care Entrée program teaches receiving membership fees from individuals and participating via incentives within a member multi-level marketing network (para. 10), wherein one of the incentives includes paying a portion of each received membership fee into a multi-level marketing matrix (p. 2, para. 8-9; p. 11, para. 61-64), and obtaining information from one or more medical/service good providers that have joined the health care plan (para. 41).

Care Entrée fails to teach a computer program embodied on a computer readable medium executable by a server for providing health care plan comprising: a code segment for providing a discount price list and a medical/service/good provider listing to the members that regulates the cost of goods/services to members by the medical service/good providers such that the members pay the service/good providers in-full directly for any services/goods rendered to the members

based on the discount price list, and wherein the medical service/good provider listing comprises basic listing and premium listings for the medical service/good providers.

Lipton teaches a discount price list and a medical/service/good provider listing to the members that regulates the cost of goods/services to members by the medical service/good providers such that the members pay the service/good providers in-full directly for any services/goods rendered to the members based on the discount price list, and wherein the medical service/good provider listing comprises basic listing and premium listings for the medical service/good providers (Lipton: para. 7, 41-45, and 111).

Lipton fails to teach a computer program embodied on a computer readable medium executable by a server and a code segment.

Ferguson teaches a computer program embodied on a computer readable medium (Ferguson: col. 3, 39-50) executable by a server (Ferguson: col. 7, 42-47) and a code segment (Ferguson: col. 2, 39-50).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention to combine the teachings of Care Entrée, Lipton, and Ferguson with the motivation of generating and executing a fast, user-friendly online system (Ferguson: col. 4, 18-20).

26. As per claim 26, the Care Entrée program teaches a system in which individuals pay a membership fee to the network provider to join the health care plan (page 3, paragraph 10) and participate via incentives within a member multi-level marketing network (page 2, paragraph 9), wherein one of the incentives includes paying a portion of each received membership fee into a

multi-level marketing matrix (p. 2, para. 8-9; p. 11, para. 61-64). The Care Entrée program discloses a method in which anyone can pay a certain fee to join a health care plan.

The Care Entrée program fails to disclose an apparatus for providing a health care plan including a server, storage devices, communication interface, and a membership fee.

Lipton teaches a discount price list and a medical/service/good provider listing to the members that regulates the cost of goods/services to members by the medical service/good providers such that the members pay the service/good providers in-full directly for any services/goods rendered to the members based on the discount price list, and wherein the medical service/good provider listing comprises basic listing and premium listings for the medical service/good providers (Lipton: para. 7, 41-45, and 111).

Ferguson et al. teaches a system for providing a health care plan comprising a server (column 7, lines 42 - 47); one or more storage devices communicable coupled to the server, the one or more storage devices containing a discount price list that regulates the cost of goods/services provided to the members by a health care plan such that the members pay the network provider for any goods and/or services provided in full directly the discount price (column 7, lines 64 - 66); and a communications interface communicably coupled to the server that allows a member to access the discount price list (column 7, lines 48 - 50).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention to combine the teachings of Care Entrée, Lipton, and Ferguson with the motivation of increasing accessibility and availability of the pharmaceutical listing and discount price list (Ferguson: col. 2, 7-9).

27. Claim 29 recites substantially similar limitations as those already addressed in claim 25, and, as such, are rejected for similar reasons as given above.

28. Claim 30 recites substantially similar limitations as those already addressed in claim 26, and, as such, are rejected for similar reasons as given above.

Response to Arguments

29. Applicant's arguments with respect to claims 2-26 and 28-30 have been considered but are not persuasive.

Claims 24-26 and 28-30

30. Applicant submits that the cited references do not teach or suggest that that "one of the incentives comprises paying a portion of each received membership fee into a multi-level marketing matrix". Examiner disagrees. Examiner states that there is no description of the incentives including paying a portion of the received membership fee into a multi-level marketing matrix. Examiner further states that the cited references teaches that the fees paid by the members are paid to the network providers or the doctors (i.e. multi-level marketing matrix); therefore teaching "one of the incentives comprises paying a portion of each received membership fee into a multi-level marketing matrix".

31. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEETAL R. RANGREJ whose telephone number is (571) 270-1368. The examiner can normally be reached on M-F 8:30-5:30.

34. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/S. R. R./
Examiner, Art Unit 3686
February 4, 2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
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